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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Working Group on Contemporary Forms
of Slavery
Sixteenth session
29 July-2 August 1991
Items 4 and 5 of the provisional agenda

PREVENTION OF TRAFFIC IN PERSONS AND THE EXPLOITATION OF THE PROSTITUTION OF OTHERS

REVIEW OF DEVELOPMENTS IN OTHER FIELDS OF CONTEMPORARY FORMS OF SLAVERY

Information received from non-governmental organizations

Note by the Secretary-General

Addendum

The present document contains a statement submitted by Anti-Slavery International entitled "Migrant domestic workers" and a joint statement by Anti-Slavery International supported by Defence for Children International and International Catholic Child Bureau entitled "Measures to improve the effectiveness of the Working Group".

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I. MIGRANT DOMESTIC WORKERS

1. Last year Anti-Slavery International (ASI), under its former name of Anti-Slavery Society, reported to this Working Group that the working conditions of female domestic helpers employed in foreign countries frequently amounted to a form of contemporary slavery.

2. A case currently before the courts in the United Kingdom would suggest that the young female plaintiff has experienced this form of contemporary slavery. She was reportedly brought from her Nigerian village when aged about 16 and employed as a domestic by a wealthy Nigerian couple living in the north of England. The girl's wages of £2 a month were sent home to her parents and her working day was 18 hours long. As no judgement has yet been reached in the case it would be improper to comment further except to repeat the words, already in the public domain, of her barrister:

> "(the girl was kept) in conditions it can only be right to describe as akin to slavery."

3. The exploitation of domestics in the United Kingdom would appear to be different from that obtaining in other EEC countries and in, amongst other nations, the Gulf States, Lebanon, Israel, Iraq (before the recent conflict), Hong Kong and Singapore. Overwhelmingly, employers of Britain's 3,000 or more enslaved domestics are foreign nationals, usually citizens of Gulf nations, who bring their servants with them when visiting the United Kingdom. They import slavery along with their baggage.

4. Until the spring of this year, the British Government had refused to acknowledge that its stipulation that overseas domestics be prohibited from changing their employers allowed labour exploitation amounting to servitude to appear in the first society legally to abolish slavery. However, after representations from London-based groups such as Kalayaan and the Commission for Filipino Migrant Workers and, significantly, after ASI's submission to this Working Group in 1990, the British Government announced new measures to come into effect on 20 May this year. Among these measures is the production of a leaflet outlining the rights of workers under British legislation.

5. ASI welcomes this change in attitude; it now urges the Home Office to address the problem of women who are incarcerated in the homes of their employers. They are effectively outside the reach of the law.

6. The bulk of the overseas domestic workers in Hong Kong, like their counterparts in the United Kingdom, come from the Philippines. It would be overstating the case to claim that these 60,000 or so Filipinos are exploited to the point of slavery, but their daily working hours are rarely made explicit in their employment contracts and, as a consequence, the working day is as long as the employers deem it to be. Unsurprisingly, this does lead to abuse as does the Hong Kong Government's "two weeks" rule.

7. Under this rule - it is not a law - domestic workers are committing an offence if they do not leave the colony within two weeks of the termination of their employment. This bears very heavily on those domestics who have been forced to run away to avoid physical and sexual abuse, or because their wages

or passports have been withheld, or because they have not been given a ticket for their journey home. The Immigration Department administers the two weeks rule and it is at its absolute discretion that aggrieved domestics trying to seek redress are issued with visitors' visas and thus allowed to stay in Hong Kong. While fighting their cases, domestic servants, usually without independent means, are prohibited from working.

8. Even those immigrant workers who find legal employment after their contract has expired must, under current procedures, return to their country of origin and apply for a new contract all over again. This necessitates unavoidable expense and delay.

9. In employment disputes, custom, practice and the whole machinery of administration are weighted in favour of the employer and against the employee.

10. According to a Hong Kong lawyer who voluntarily helps domestics in their disputes:

> The system has now become so slow and cumbrous, and weighted against the female domestic helper that ... I understand it is not at all unusual for Labour Department staff to inform female domestic helpers that there is little point in pursuing a claim against the employer both because of the procedural difficulties they will encounter and also because there are delays, aggravation and out-of-pocket expenses ...

11. The Republic of the Philippines has the dubious distinction of being the world's largest exporter of women - over a million throughout the world - though this unofficial title is being increasingly threatened by other countries in south and south-east Asia.

12. By far the majority of the women encouraged by the Government to work abroad, become domestic workers, and this includes professional women, especially teachers and nurses. They work in a number of countries, being employed directly and openly as in Hong Kong, or indirectly and semi-secretly as in Great Britain. In both the metropolitan country and in her colony overseas domestic workers are predominently Filipinos.

13. These women are constantly exhorted by the Government's Philippines Overseas Employment Administration (POEA) and the lucrative private recruitment industry to seek jobs abroad. So keen are the agencies to find clients that they will even lend the amount of their fees to applicants. These fees have been known to be as high as 60,000 pesos* (£1,200) for jobs in Europe; wages of 800 pesos (£16) a month are far from uncommon in the Philippines.

14. Although the workers are indebted to the agents and often to third persons, they are not technically bonded labourers as defined by the United Nations Slavery Convention** because they are not directly in debt

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*/ £1 = 47/50 pesos; $US 1 = 27/30 pesos.

**/ 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

to their employers. They are, however, in a vulnerable position and, it may be argued, in a condition analagous to debt bondage because:

(a) Often the debt has to be redeemed, with interest, during the first six months of employment; this means that dependents in the Philippines are deprived of remittances which in turn may increase the spiral of familial indebtedness;

(b) Being effectively deprived of income, the migrant worker is often compelled to borrow from a money-lender during the initial debt-repayment period or, as a delayed consequence of the wageless six months, later during her employment.

15. In 1982 the Philippine Government showed an awareness of malpractices in the recruitment industry and banned new applications for licences from prospective agencies while re-evaluating its licensing policy. When Cory Aquino became President in 1986, there were in excess of 700 licensed agencies. The ban was quietly rescinded this year by Executive Order 450 issued by Executive Secretary, Oscar Orbos.

16. The Manila-based non-governmental organization concerned with migrant workers, Kaibigan, immediately called for the repeal of the Order on the grounds that it "will open wide the door for the entry of new vultures that will prey on hapless victims whose ranks have swollen due to aggravating misery and poverty they experience ...".

17. ASI joins Kaibigan in urging the Philippine Government to proceed with a thorough review of both the recruitment agencies and of licensing policies. ASI also share Kaibigan's view that the ban itself resulted in applicants falling prey to illegal recruiters, and that lifting the ban virtually arbitrarily makes them vulnerable to more abuse and exploitation.

18. That female domestic workers do suffer abuses, mainly through debt and through being duped, has been implicitly recognized by the recent proposal of the Secretary of Labour, Ruben Torres, that prospective contract workers in Hong Kong be dealt with exclusively by the POEA. There is to be no role for private recruiters. This is a welcome development as long as it is accompanied by strict and enforceable counter-graft measures.

Recommendations

19. Anti-Slavery International recommends in:

(a) the United Kingdom:

(i) That domestics brought in as employees of foreign nationals be given work visas;

(ii) That they be given a written employment contract;

(iii) That they be allowed to leave abusing employers and to seek alternative employment during their period of legal residence in the United Kingdom;

(iv) That employers of overseas domestics be given a code of practice in line with British employment legislation;

(v) That a system of spot checks be set up;

(b) Hong Kong:

(i) That the authorities, including the Legislative Council, cooperate with nongovernmental organizations and concerned lawyers to replace the two weeks rule with legislation in conformity with acceptable standards of human rights;

(ii) That daily hours of work and time off be written in to all migrant workers' contracts;

(c) the Philippines:

(i) That Executive Order 450 be immediately repealed and that United Nations bodies such as the International Labour Organisation be approached to review recruitment policies and practices;

(ii) That, with suitable safeguards, the plan to recruit workers for Hong Kong exclusively through POEA be made a reality as soon as possible;

(iii) That the Philippine authorities enter into Government-to-Government agreements with all nations employing their nationals.

20. In addition, Anti-Slavery International welcomes the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and notes especially article 11(1):

> No migrant worker or member of his or her family shall be held in slavery or servitude.

21. ASI urges, through the Chairman of the Sub-Commission, all those Member States of the United Nations which have not done so, to ratify the new Convention as a matter of urgency.

II. MEASURES TO IMPROVE THE EFFECTIVENESS OF THE WORKING GROUP

22. By resolution 1989/35, the Commission on Human Rights requested the Secretary-General to undertake a study of the ways and means by which an effective mechanism may be established for the implementation of the Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949. The report (E/CN.4/Sub.2/1989/37) cites many resolutions, surveys, reports and recommendations over the years referring to the inadequacy of the mechanisms for the implementation of the three conventions. Part of the report looks at

the mandate, role and functioning of the Working Group on Contemporary Forms of Slavery. It is in this context that the organizations co-signing this document would like to make the following comments.

23. It is apparent that one of the major weaknesses of the present system is in its reporting. There are three main areas:

(a) Reports submitted by non-governmental organizations are not usually communicated to the Governments concerned. Of course, some NGOs do submit their reports directly to Governments. However, reports submitted by the Working Group itself with comments and/or questions could be more effective in soliciting a substantive response;

(b) States parties do not in general feel obliged to submit reports to the Working Group. Some do reply to reports submitted by NGOs, many do not. Very few States parties submit reports on the situation in their countries. There is no mandate at the moment for the Working Group to receive regular reports from States parties, nor, in particular, to examine the working of any laws, regulations or administrative procedures pertaining to slavery-like practices;

(c) It is apparent that the elimination of contemporary forms of slavery requires concerted action by the international community, Governments and NGOs. It is important that the specialized agencies recognize the complex nature of contemporary forms of slavery and identify areas within their work which might facilitate elimination of such practices. In particular, information is notable by its absence from United Nations representatives in the countries where such practices are widespread;

(d) Written submissions could be especially useful from United Nations agencies and organs.

24. Although the Working Group continues to be flexible in its methods of work, lack of resources means that information is often not given directly by organizations from the countries most affected. In this regard, it is hoped that the proposal to establsh a voluntary fund for the use of the Working Group is accepted by the General Assembly. As well as assisting people to attend the Working Group from the countries affected it is hoped that funds could also be made available for regional seminars, special reports, advisory services, etc., as suggested by the Secretary-General.

25. At the forty-seventh session of the Commission on Human Rights, the Secretary-General was requested to assign a full-time member of staff. The need for a permanent secretariat at the Centre for Human Rights for the Working Group has been evident from the Working Group's inception in 1975. It is vital that there is continuity between the meetings and that the members of the Working Group are kept informed of developments. A permanent secretariat would greatly facilitate the efforts of non-governmental organizations in this regard.

26. For the seventeenth session of the Working Group on Contemporary Forms of Slavery in 1992 it is proposed to evaluate the method of working by themes. Slavery and slave-like practices do not disappear overnight with simple

political or legal changes, but also require long-term economic and social changes. Three years therefore is a short time to evaluate whether a particular methodology will be effective in the long run. Indeed, the Special Rapporteur appointed as a consequence of work on the first theme will only just be submitting his report. It would be particularly useful if the members of the Working Group could give some thought to the criteria for such an evaluation.

27. The programme of working on certain themes over the last years has allowed some appreciation of the scale of the problem of contemporary slavery and the inadequacy of the international community's response. The Commission on Human Rights at its forty-seventh session indicated its grave concern that slavery, the slave trade, slavery-like practices and even modern manifestations of this phenomenon still exist, representing some of the gravest violations of human rights. It is hoped that the discussions on the theme for 1991 will facilitate debates on the implementation of the Slavery Conventions generally and the possibilities for improved monitoring procedures.